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SUBJECT: LEBANON: BRAMMERTZ SEES FEW COMPLICATIONS FROM A CHAPTER VII TRIBUNAL

Classified By: Ambassador Jeffrey D. Feltman. Reason: Section 1.4 (b)

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SUMMARY

¶11. (C) In a 4/25 meeting, UNIIC Commissioner Brammertz informed the Ambassador that his sizable investigative team is moving steadily forward in all areas of inquiry: forensics, interviews, evidence prioritization and archiving, correlation of findings, and laying the groundwork for prosecution strategy. Brammertz intends to use the extra breathing space created by the recent one-year extension of UNIIC's mandate to conduct a consolidated review of exactly where the investigation now stands, and what needs to be accomplished to successfully conclude the case this year. He indicated that this review would form the substance of the next interim report due July 15. Concerning the Special Tribunal, Brammertz stated that although the potential for hostile reaction would increase if the court is established under Chapter VII, he also believes there are real advantages, not the least of which is that it would be easier to staff an international tribunal with existing UNIIC personnel. He mused that it might be better, of the UNSC establishes the tribunal, to avoid utilizing Lebanese judges.

Brammertz was somewhat surprised that PM Siniora seems to be taking a "go slow" approach toward Chapter VII and clearly believed the sooner the tribunal is established, the better. Finally, he remarked that even though his team is now well-staffed, he himself remains in limbo regarding his tenure at UNIIC (that expires June 15) and inferred he would appreciate U.S. support for his situation with UNSYG staff.
End summary.

¶12. (SBU) Commissioner Serge Brammertz met with the Ambassador, Special Assistant and NEA/ELA Desk Officer at UNIIC headquarters in Montevideo, located just east of Beirut. Mathieu Lefevre, Special Assistant to the Commissioner, also attended the meeting. Senior investigator Rosemary Nidiry joined the discussion when the matter of additional U.S. technical assistance to the commission was raised.

STEADY PROGRESS

¶13. (SBU) Mr. Brammertz conveyed confidence and satisfaction with the way his commission was now operating. He explained that earlier difficulties with UN's complex personnel system appear to be resolved and the commission is now operating

with a full complement of approximately 45 investigators and several dozen support personnel. And although three of his six team leaders have, or are in the process, of leaving, their replacements have been recruited and two are already onboard.

¶4. (C) Although -- characteristically -- he would not discuss specifics, it was clear that Brammertz is pleased with the progress his investigators are making. It was also evident that he has taken advantage of the mandate extension to modify the investigation's timeline. The Commissioner stated that he has instructed his six team leaders to assess exactly where their findings stood in relation to each other, but more importantly, what action remained to successfully wrap up the inquiry sometime late this fall. The substance of this "consolidation report" would form the core of the next interim report due at the Security Council in mid-July. Brammertz confided to the Ambassador that he would like to finish up his tenure at UNIIC -- and presumably the investigation -- late this year which would give him two years at the commission.

¶5. (C) The only details Brammertz revealed concerning the investigation itself was that his team was planning to interview, or re-interview, several officials of the Syrian regime in the coming months. He indicated that accumulating evidence and correlation of findings were being used to carefully prepare these follow-on interviews. Brammertz also mentioned that his investigators intended to gain access to archived documents in the Syrian capital, which he said would reveal reporting patterns which would assist with other segments of the investigation. Interestingly, his remarks regarding the actual investigation focused on Syria.

BEIRUT 00000591 002 OF 003

THE FOUR GENERALS

¶6. (C) The Commissioner also discussed the "awkward" legal situation involving the four senior Lebanese security and intelligence officers being held by Lebanese authorities for suspected involvement in the Hariri assassination. Brammertz revealed that lawyers for all four generals regularly petitioned him to release what the commission knows about their clients' involvement in the crime. Brammertz said he categorically refuses to accede to these requests by explaining that not only is the investigation still in progress, but any release of information or recommendations to Lebanon's judicial system could be construed as interference, and well beyond the purview of the commission. He rejected the lawyers' request that UNIIC say that its investigation of the generals was over. Even though he acknowledged that the name of at least one of the generals keeps "emerging" in various parts of the investigation, he conceded the actual legal case to keep them in confinement is "fragile" and sooner or later, Lebanon's judiciary will have to address the matter.

SPECIAL TRIBUNAL AND CHAPTER VII

¶7. (C) Even though he views it in purely analytical terms, Brammertz admitted that he believes the only way the Special Tribunal can now be established is through Chapter VII authorization. He expressed surprise when the Ambassador conveyed the information that PM Siniora seems to be taking a gradual approach in making a specific Chapter VII request to the Security Council, with Siniora looking for UNSC after May 31. Brammertz said that, of course, it would be preferable for the constitutional process to prevail, but noted that Lebanon's current political impasse is so intractable that there is no other option. He emphasized he was relieved that, during his recent meeting with Nicolas Michel, the OLA chief had solidly assured him, "...the tribunal will be established."

18. (C) Echoing several other political observers we have spoken with recently, the Commissioner said there was a very real possibility that Chapter VII action could produce hostile reactions, perhaps even against the commission, which up to now has been notably free of criticism. But he continued that even that threat should not dissuade quick, decisive action by the Security Council. He pointedly stated, "If there are doubts that the tribunal will be established, it will make our task so much more difficult." Brammertz revealed that numerous witnesses were very reluctant to allow their testimony to be passed to Lebanon's judiciary and testified contingent on limiting release only to a UN-protected court. Brammertz made it clear the advantages of Chapter VII were well worth the risks.

19. (C) One apparent point of divergence within the UN did arise when the Commissioner stated that, in his opinion, a Chapter VII tribunal would clearly be of international in character, that is, the requirement for Lebanese participation in the selection of its judges and the application of Lebanese law would no longer apply. He explained that to continue to rely on Lebanese participation would inevitably "freeze" establishment of the court as solidly as the opposition's enforced closure of parliament is doing now. Brammertz recommended that if the Security Council intends to use Chapter VII, it has to go all the way and establish the tribunal along international lines, like the ICC and the International War Crimes Tribunal for the Former Yugoslavia. The Ambassador advised the Commissioner to discuss his views with Nicolas Michel before serious negotiations on Chapter VII commence.

EXTENSION FOR BRAMMERTZ AND OTHER MATTERS

110. (C) In his typical low-key manner, Brammertz expressed mild annoyance that despite his request for assistance several months ago with regard to his permanent position at the ICC, the UN has been noticeably slow to resolve his dilemma. He said the ICC has made it clear they would not entertain another extension of his leave-of-absence, which expires June 15. He said he had discussed his situation with Nicolas Michel, who indicated the best solution would be

BEIRUT 00000591 003 OF 003

finding an appropriate position for Brammertz on the UN staff once the commission completes its work. Brammertz said he would be happy with that course of action and indicated he would appreciate any assistance the U.S. Mission in New York could render in this regard. The Commissioner said he would like to see his work in Beirut successfully completed by late this year. Speaking to the Ambassador privately on the margins of the meeting, Brammertz was more blunt: if the UN doesn't soon move on its request to find him an appropriate position within the UN system, then he would leave UNIIIC on June 15, maybe even taking accumulated leave before then, leaving UNIIIC in the lurch before the next report in July. He said that UNSC members should not assume he will stay at UNIIIC, for his continued tenure will rely on having something else to do afterwards.

111. (C) Rosemary Nidiry joined the meeting to discuss further requests to the U.S. for technical assistance. The request guidelines which were discussed when Ms. Nidiry visited Washington in February were reviewed and it was decided a new list would be forwarded to NEA/ELA in approximately two weeks. Brammertz said he understood the constraints regarding sensitive technical assistance, because he had encountered similar issues when dealing with the intelligence and law enforcement agencies of other assisting nations, but he emphasized the more technical assistance they received from the international community, the more conclusive would be the commission's final findings.

FELTMAN